

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BROOKSTONE COMPANY, INC.,

Plaintiff,

v.

SHARPER IMAGE CORPORATION,

Defendant.

Civil Action No. 04 10907 NMG

**BROOKSTONE COMPANY, INC.'S  
REPLY TO SHARPER IMAGE'S COUNTERCLAIMS**

The plaintiff, Brookstone Company Inc. ("Brookstone") hereby responds to the allegations set forth in each paragraph of the Counterclaims of the defendant, Sharper Image Corporation ("Sharper Image"), as follows:

**Parties and Jurisdiction**

1. Brookstone admits that on information and belief, Sharper Image is a Delaware corporation as alleged in Paragraph 1.
2. Brookstone admits that it is a New Hampshire corporation with a principal place of business located at 17 Riverside St., Nashua, New Hampshire.
3. Brookstone admits that this Court has jurisdiction over the alleged Counterclaims, and that venue is proper. Otherwise, Brookstone denies the averments of Paragraph 3.

4. Brookstone admits that, in its Complaint, it has charged Sharper Image with infringement of the '783 and '391 Patents. Otherwise, all averments, if any, of Paragraph 4 are denied.

COUNT I

DECLARATORY JUDGMENT FOR NONINFRINGEMENT OF THE '783 AND '391 PATENTS

5. In response to Paragraph 5, Brookstone incorporates herein its responses to Paragraphs 1–4 above as if set forth in full.

6. Brookstone denies the averments, if any, of Paragraph 6.

COUNT II

DECLARATORY JUDGMENT  
FOR INVALIDITY AND UNENFORCEABILITY OF THE '783 AND '391 PATENTS

7. In response to Paragraph 7, Brookstone incorporates herein its responses to Paragraphs 1 – 6 above as if set forth in full.

8. Brookstone denies the averments, if any, contained in Paragraph 8.

**BROOKSTONE'S AFFIRMATIVE DEFENSES**

FIRST AFFIRMATIVE DEFENSE

Sharper Image in its Counterclaims fails to set forth a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent that any of the paragraphs in Sharper Image's Affirmative Defenses in its Answer to Brookstone's Complaint contain averments, Brookstone denies same.

**WHEREFORE**, Brookstone respectfully requests that Sharper Image take nothing by its Counterclaims, either at law or equity, that the same be dismissed with prejudice, that Brookstone be awarded its costs and attorneys fees in defending the Counterclaims as provided by law, that all relief requested by Sharper Image be denied, and that this Court award Brookstone such other relief that this Court deems just and proper.

**BROOKSTONE REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

**RESPECTFULLY SUBMITTED**

Brookstone Company Inc.

By Its Attorneys,

/s/ Jonathan D. Cohen

Jonathan D. Cohen, BBO No. 600081

**GREENBERG TRAURIG, LLP**

One International Place

Boston, MA 02110

(617) 310-6000

OF COUNSEL:

George G. Matava, Esq.

Brian A. Carpenter, Esq.

**GREENBERG TRAURIG, LLP**

1200 Seventeenth Street, Suite 2400

Denver, CO 80202

(303) 572-6500

July 23, 2004